

COMMISSION ON STATE MANDATES

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September 8, 2006

Ms. Jeannie Oropeza
Department of Finance
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

Re: Draft Staff Analysis and Hearing Date

Request to Amend Parameters and Guidelines

Sex Offenders: Disclosure by Law Enforcement Officers, 05-PGA-09 (97-TC-15)

Penal Code Sections 290 and 290.4

Statutes 1996, Chapters 908 and 909; Statutes 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822; Statutes 1998, Chapters 485, 550, 927, 928, 929 and 930

Department of Finance, Requestor

Dear Ms. Oropeza:

The draft staff analysis for your request to amend the above-named parameters and guidelines is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **September 25, 2006**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This matter is tentatively set for hearing on **October 26, 2006**, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions, please contact Nancy Patton at (916) 323-8217.

Sincerely,

PAULA HIGASHI

Executive Director

Enclosures

ITEM _____
DRAFT STAFF ANALYSIS
REQUEST TO AMEND PARAMETERS AND GUIDELINES

Penal Code Sections 290 and 290.4

Statutes 1996, Chapters 908 and 909

Statutes 1997, Chapters 17, 80, 817, 818, 819, 820, 821, and 822

Statutes 1998, Chapters 485, 550, 927, 928, 929, and 930

*Sex Offenders: Disclosure by Law Enforcement Officers
(Megan's Law)*

05-PGA-09 (97-TC-15)

Department of Finance, Requestor

EXECUTIVE SUMMARY

The Executive Summary will be provided with the final staff analysis.

STAFF ANALYSIS

Requestor

Department of Finance (DOF)

Chronology

08/23/01 Commission on State Mandates (Commission) adopts Statement of Decision
03/28/02 Commission adopts parameters and guidelines
09/14/05 DOF requests that parameters and guidelines be amended
09/08/06 Draft staff analysis issued

Summary of the Mandate

The test claim statutes (Penal Code sections 290 and 290.4) concern the registration of certain convicted sex offenders when they are released from incarceration, when they change their temporary or permanent residence, or when they annually update their registration; and public disclosure of their identity by local law enforcement agencies.

On August 23, 2001, the Commission adopted the Statement of Decision for *Sex Offenders: Disclosure by Law Enforcement Officers* (97-TC-15).¹ The Commission found that portions of Penal Code sections 290 and 290.4 constitute a new program or higher level of service and impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Accordingly, the Commission approved this test claim for the following reimbursable activities:

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (Pen. Code, §290, subd. (a)(1)(F).)
- Removal of Registration for Decriminalized Conduct (Pen. Code, §290, subd. (a)(2)(F)(i).)
- Pre-register (Pen. Code, §290, subd. (e)(1)(A-C).)
- Contents of Registration Upon Release (Pen. Code, §290, subd. (e)(2)(A-E).)
- Notice of Reduction of Registration Period (Pen. Code, §290, subd. (l)(1).)
- High-Risk Sex Offenders (Pen. Code, §290, subd. (n).)
- CD ROM (Pen. Code, §290.4, subd. (4)(A-C).)
- Records Retention (Pen. Code, §290, subd. (o).)

On March 28, 2002, the Commission adopted parameters and guidelines for this program.²

¹ Exhibit A.

² Exhibit B.

As stated in the test claim statutes, its provisions apply to “designated law enforcement entities.” Specifically, Penal Code section 290, subdivision (n)(1)(I), states:

“Designated law enforcement entity” means any of the following: municipal police department; sheriff’s department; ...or the police department of any campus of the University of California or California State University, or *community college*. (Emphasis added.)

The parameters and guidelines include community college districts as eligible claimants for this program.

Department of Finance’s Proposed Amendments

In previous Commission decisions, based on the Supreme Court’s holding in *Kern High School Dist.*, school districts were not entitled to reimbursement for activities required by the state when the activities are triggered by the discretionary local decision to employ peace officers. On September 14, 2005, based on these past decisions, DOF requested that the *Sex Offenders: Disclosure by Law Enforcement Officers* program be amended to remove community college districts as eligible claimants for this program.³

DOF states in its request:

Education Code Sections 38000 and 72330 permit K-12 school and community college districts to establish police departments, but do not require it. Therefore, forming a police department is a discretionary activity on the part of these districts, and pursuant to case law and consistent with other Commission decisions regarding school and community college district law enforcement activities, the consequences of participation in a discretionary program cannot be found to be reimbursable.

Issue: Does the Commission have jurisdiction to remove community college districts as eligible claimants in the *Sex Offenders: Disclosure by Law Enforcement Officer* parameters and guidelines?

The Commission’s Statement of Decision approved the test claim statute (Pen. Code, § 290 (n)), which imposes the mandated activities on designated law enforcement entities defined to include community college districts. The Commission did not deny reimbursement to community college districts in the Statement of Decision, but rather found that the program was reimbursable for “local law enforcement agencies,” as defined in Penal Code section 290, subdivision (n)(1)(I). Thus, if the Commission amended the parameters and guidelines as requested by DOF, the parameters and guidelines would not be consistent with the Statement of Decision. Moreover, the Commission has no jurisdiction to retry this issue since the Statement of Decision is final.

It is a well-settled principle of law that an administrative agency does not have jurisdiction to retry a question that has become final. If a prior decision is retried by the agency, that decision is void. (*Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407, where the court held that the civil service commission had no jurisdiction to retry a question and make a different finding at a later time; *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 697, where the court held that whenever a quasi-judicial agency is vested with the authority to decide a question, such

³ Exhibit C.

decision, when made, is res judicata, and as conclusive of the issues involved in the decision as though the adjudication had been made by the court; and *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143, where the court held that in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once the decision becomes final.)

The Commission's Statement of Decision became final when it was mailed or served on August 24, 2001 (Cal. Code Regs, tit. 2, section 1188.2, subd. (b)). Therefore, the Commission does not have jurisdiction to retry or change a finding made in the Statement of Decision.

Conclusion

The DOF's request to remove community college districts as eligible claimants should be denied because the Commission does not have jurisdiction to amend the parameters and guidelines to remove community college districts as eligible claimants. This action would make the parameters and guidelines inconsistent with the Statement of Decision.

Staff Recommendation

For the reasons stated above, staff recommends that DOF's request to amend the parameters and guidelines for the *Sex Offenders: Disclosure by Law Enforcement Officers* program be denied.